International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Belgium under article 29, paragraph 1, of the Convention*

I. General information

1. In relation to paragraph 170 of the report (CED/C/BEL/1 and Corr.1), please provide updated information about the process of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment and the establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions (Paris Principles) adopted by the General Assembly in resolution 48/134 of 20 December 1993.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

2. Please indicate whether, in the bill being prepared to establish enforced disappearance as an autonomous crime, it is envisaged that an express prohibition will be inserted to invoke a state of necessity or any public emergency to justify an enforced disappearance, similar to that included in article 417 *ter* of the Criminal Code in relation to the crime of torture (art. 1).

3. Please update the Committee on the current status of the bill mentioned in paragraphs 4 and 8 of the report, including the timetable envisaged for its adoption and entry into force. Furthermore, please indicate whether relevant civil society actors have or have had a role in the process of elaboration of this bill. If a draft already exists, please also provide information on its content, in particular with regard to the proposed definition of enforced disappearance, specific aggravating and mitigating circumstances and penalties (arts. 2, 4, 6 and 7).

4. Please indicate how enforced disappearance as a crime against humanity is defined in Belgian law, taking into consideration that article 136 *ter* of the Criminal Code does not expressly provide for such a definition (art. 5).

* Adopted by the Committee at its sixth session (17–28 March 2014).

5. Taking into consideration the system of responsibility provided for by the law with regard to enforced disappearance as a crime against humanity (article 136 *septies* of the Criminal Code) and the affirmation made by the State party in paragraphs 58 and 59 of the report, please further elaborate on the reasons why superior responsibility would not be the same for all cases of enforced disappearance (i.e. as a crime against humanity or as an isolated act). In addition, and taking into account the express prohibition of superior orders as a justification for the commission of a crime of torture (article 417 *ter* of the Criminal Code) or a crime against humanity (article 136 *octies* of the Criminal Code), please indicate whether it is envisaged that a similar express provision will be adopted in relation to isolated cases of enforced disappearance (art. 6).

6. In relation to paragraphs 71 and 72 of the report, please specify the mitigating and aggravating circumstances provided for by the law in relation to the offences that could be applied in relation to a potential case of enforced disappearance. Please also indicate whether domestic law provides for disciplinary sanctions with regard to public officials other than the police and the armed forces and, if relevant, please describe the applicable rules (art. 7).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

7. It is stated in paragraph 88 of the report that the continuous nature of an offence is never expressly referred to in legislative texts, but is a matter for determination by the courts. In this respect, the State party cites the jurisprudence of the Court of Cassation from 1875 recognizing the continuous nature of the offence of abduction (CED/C/BEL/1, para. 89, footnote 25). Please indicate whether there have been other precedents in this respect. Furthermore, please indicate how it is ensured that there is no room for interpretation that may have a negative effect on the recognition of the continuous nature of enforced disappearance. In this respect, and in relation to paragraph 89 *in fine* of the report, please also indicate if a mention of the continuous character of the offence of enforced disappearance has been made in the context of the *travaux préparatoires* of the legislative amendment to establish it as a crime (art. 8).

8. Please provide information on the existing mechanisms for implementing article 10, paragraph 2, of the Convention, in relation to notifying a State party, as referred to in article 9, paragraph 1, of the Convention, when a person of its nationality has been detained, including the circumstances warranting detention; the findings of the preliminary inquiry or investigations; and whether it intends to exercise its jurisdiction (art. 10).

9. Given that military jurisdiction has been abolished in peacetime (para. 112, footnote 37 of the report), please indicate whether the military authorities would be competent to investigate and/or try alleged cases of enforced disappearance that might be perpetrated in time of war. If so, please provide information about the applicable legislation (art. 11).

10. Please indicate whether the measures for the protection of witnesses provided for by the Code of Criminal Investigation, mentioned in paragraph 122 of the report, could be applied to other people who, without being witnesses *stricto sensu*, participate in an investigation of an enforced disappearance, such as the complainant, the relatives of the disappeared person and their defence counsel. Please indicate whether all cases of enforced disappearance could trigger the intervention of the Disappeared Persons Unit of the Federal Police. Furthermore, please explain whether there are any limitations to the intervention of this Unit in cases where the person is not found within a short period of time (art. 12).

11. Taking into consideration the information provided in paragraphs 127 to 130 of the report, please indicate whether there are any procedural mechanisms in place to exclude a

security or law enforcement force from the investigation into an enforced disappearance when one or more of its officials are accused of having committed the offence (art. 12).

12. Please elaborate on the information provided in paragraph 132 of the report, which indicates that, as enforced disappearance is not included in the earliest extradition treaties, in principle it is not extraditable. Please also elaborate on the information provided in paragraph 133 regarding the applicability of the double criminality principle. Please also indicate whether any extradition agreements with other States parties have been concluded since the entry into force of the Convention and, if so, indicate whether enforced disappearance has been included in such agreements, as requested in article 13, paragraph 3, of the Convention. Please indicate whether there are any provisions in domestic law ensuring that enforced disappearance will not be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives. Furthermore, please indicate whether a denial of extradition could be based on the immunity granted to certain categories of persons and/or officials and, in that case, please enumerate such categories (art. 13).

IV. Measures to prevent enforced disappearances (arts. 16–23)

13. Please provide additional information about the mechanisms and criteria to evaluate and verify the risk that a person may be subjected to enforced disappearance that are applied in the framework of procedures for expulsion, return, surrender or extradition. Please also indicate whether there are any States that are considered to be safe and, in that case, on the basis of what criteria a State is considered safe. Furthermore, please indicate whether diplomatic assurances could be accepted when there is reason to believe that there is a risk that a person might be subjected to enforced disappearance (art. 16).

14. Please indicate when it is envisaged that the Royal Order establishing the exact content of registers of persons deprived of liberty, conditions of use and data protection measures mentioned in paragraph 164 of the report might be adopted and enter into force. If a draft text exists, please indicate whether the list of elements that registers shall contain includes all the information enumerated in article 17, paragraph 3, of the Convention. Please also indicate whether there have been any complaints concerning the failure by public officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of their liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed (arts. 17 and 22).

15. Please specify whether the measures requiring notification of, and access to, family members, counsel, consular representatives in the case of foreign nationals and any other person chosen by the individual deprived of liberty, apply in all cases from the outset of the deprivation of liberty. In this regard, please also provide detailed information about the conditions and/or restrictions that could be applied to the prompt notification and/or access of the above-mentioned persons. Please also specify whether there are independent organs of surveillance or control of places of deprivation of liberty (art. 17).

16. Taking into consideration the information provided in paragraphs 260 to 264 of the report, please indicate whether it is envisaged that specific training will be provided in the terms set forth in article 23 of the Convention to law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and prosecutors. Please also provide information about the steps being taken to build on, systematize and further develop the training in human rights for public officials, as mentioned in paragraph 153 of the common core document (HRI/CORE/BEL/2012 and Add.1) (art. 23).

V. Measures for reparation and the protection of children against enforced disappearance (arts. 24 and 25)

17. Please provide detailed information about the provisions in domestic law establishing that "by victim is understood any natural or legal person who has suffered harm as a result of an offence" (paragraph 269 of the report). In this respect, please also indicate whether this definition is relevant in relation to all the rights of victims referred to in paragraphs 274 to 280 of the report (art. 24).

18. Please elaborate on the information provided in paragraphs 278 to 280 of the report in relation to reparations. In this respect, please also provide detailed information about the assistance available to victims of the offences referred to in paragraph 271 of the report and on the mandate, functioning and available resources of the special fund for assisting the victims of intentional acts of violence as referred to in paragraph 279 of the report. Furthermore, please specify whether domestic law provides for all the forms of reparation enshrined in article 24, paragraph 5, of the Convention for persons who have suffered harm as the direct result of an enforced disappearance (art. 24).

19. Please indicate whether, in the bill being prepared to ensure the full implementation of the provisions of the Convention mentioned in paragraphs 4 and 8 of the report, it is envisaged that the specific conduct described in article 25, paragraph 1, of the Convention will be incorporated into the Criminal Code. Please also provide information about the specific modalities provided for in Belgium for gathering, conserving and accessing information on the origins of adopted children (art. 25).